

SOUTH CAROLINA EDUCATIONAL BROADBAND SERVICE COMMISSION

Meeting Minutes
October 22, 2008

Opening:

The fourth regular meeting of the SC Educational Broadband Service Commission was called to order at 8:00am on October 22, 2008 by Gary Pennington via teleconferencing. Public Notice of the meeting was provided on October 20, 2008.

Members Present Via Telephone:

Gary Pennington, Neil Mellen, Jack Cooper, William Byrd, Dr. Joachim Taiber, George Wyatt

Staff Present:

Paul Koch, Gay Hoyer

1. Approval of Agenda

Gary Pennington asked for a motion to approve the agenda. George Wyatt moved to accept the agenda, all agreed and agenda was accepted.

2. Presentations by FCC Legal Counsel

A. Fish & Richardson, P.C.

Edwin Lavergne of Fish & Richardson, P.C. was interviewed by the Commission via teleconferencing. Mr. Lavergne is a Principal in the Washington D.C. office. His practice focuses on providing business, regulatory, transactional, and litigation advice concerning wireless telecommunications services, spectrum reallocation issues, telephone and internet services, telemarketing compliance, and advertising, marketing and promotion law. Fish & Richardson is a full service law firm established about 130 year ago. It is best known for its intellectual property practice and has represented EBS clients for over 25 years. Fish & Richardson has participated in every significant regulatory proceeding at the FCC affecting EBS licenses. The firm has negotiated spectrum lease agreements in excess of a billion dollars and is committed to customer satisfaction.

Fish & Richardson has negotiated dozens of EBS spectrum lease agreements and offers many services that set them apart from other firms. Their services typically include:

- Analyzing spectrum values using their experience in the market and comparables tied to government spectrum auctions.
- Identifying interested bidders and introducing their clients to interested bidders.
- Conducting competitive auctions among interested bidders.
- Assisting clients in analyzing competing bids and selecting winning bidders.
- Negotiating and drafting spectrum lease agreements and conducting associated due diligence.

The firm employees approximately 500 attorneys and has twelve domestic offices and one foreign office. Mr. Lavergne works out the Washington D.C. office which houses

the regulatory group. This office employs around 60 attorneys, a dozen of which work in the telecommunications field.

A bio for Mr. Lavergne was provided. This firm also employs Donna Balaguer, who was Vice President of Government Affairs at CAI Wireless Systems, Inc., an early acquirer of EBS spectrum. Ms. Balaguer was also Vice President of Spectrum Relations and Management at MCI WorldCom, where she headed the EBS and BRS spectrum group and was responsible for all EBS lease negotiations, including the development of financial and legal terms. Ms. Balaguer also served as General Counsel and Vice President of Spectrum Market, LLC, a spectrum brokerage firm that marketed and sold EBS and BRS licenses. The Commission questioned Mr. Lavergne as to how they would be able to assist the Commission given the time limits. Mr. Lavergne assured the Commission that they would be ready to hit the ground running. First, they would review the spectrum, including what the state has done in the past and its future plans. They would look for any past regulatory violations and work with the FCC to correct those problems. Most importantly they would work with experts to determine and accurate valuation of our spectrum. Fish & Richardson has had success with leasing the spectrum through a telephone auction among bidders.

The services Fish & Richardson proposes to provide are as follows:

- Conduct and solicit proposals from parties that may have an interest in Client's spectrum.
- Identify and introduce Client to parties that are interested in leasing Client's spectrum.
- Assist Client with assessing value of the spectrum.
- Prepare competitive bidding letter with bidding terms; obtain agreement of bidders to terms; prepare and circulate deal term sheet with key non-monetary terms desired by Client.
- Conduct telephone auction among bidders.
- Assist Client in selecting winning bidder.

B. Rini Coran, P.C.

Robert J. Rini, John Allen and Ken Wallen, were interviewed by the Commission via teleconferencing. Rini Coran, P.C. is a Washington D.C. law firm that provides strategic, transactional, regulatory and governmental relations counsel to help clients succeed in dynamic telecommunications, media and technology marketplaces. They have strategic relationships and important contacts with industry and government leaders that help anticipate change and keep their clients informed of developments that affect them. The firm has a reputation for excellence and integrity before the FCC as well as colleagues and the business community.

Robert Rini, who would be the lead attorney, has extensive experience representing educational institutions, non-profit entities and related state agencies in connection with EBS leasing and licensing matters. He has a deep understanding of the FCC's rules applicable to EBS. Over the last decades he has helped clients in every rule making proceeding affecting ITFS and EBS. He has secured a number of licenses and license renewals. He has drafted and managed requests for proposals for use of excess EBS airtime and evaluated those proposals. He has also negotiated spectrum leases that comply with the FCC's leasing rules, provided for the timely transition of the facilities

and ensured that “substantial service” build-out requirements are met as part of the public/private partnership. Mr. Rini has broad experience in general corporate mergers and acquisitions, spectrum leases, venture capital and corporate finance, regulatory, legislative, trademark and copyright law. Some of Mr. Rini’s other accomplishments are:

- Represented clients before the FCC in every major rulemaking proceeding involving EBS/BRS regulations since 1985.
- Negotiated hundreds of spectrum lease and acquisition agreements.
- Organized a national coalition of educators to oppose spectrum auctions for EBS.
- Evaluated and managed the process for solicitation of bids through Requests for Proposals on behalf of EBS licensees.
- Secured the first experimental authorizations for the provision of fixed wireless two-way Internet services.

Rini Coran, P.C. has a deep and broad understanding of the FCC and the people, process and policies that govern telecommunications, mass media and technology regulation. They advise clients on how to navigate the FCC’s processes and bring creative solutions to achieve desired results. They represent clients in all types of transactions, including mergers and acquisitions, joint ventures, asset and stock sales, strategic alliances and collaborations, spectrum sales and leases, public and private offerings of debt and equity, fiber agreements, acquisitions of telecommunications services and networks and restructuring. Their staff is highly skilled in assessing risk and opportunities presented in a transaction.

When informed by Gary Pennington of the Commission that the issue of time was one of the main concerns, Mr. Rini assured the Commission that his staff would provide all the attention and resources needed to meet any deadline. The Commission was aware that Mr. Rini is on the Board of Directors for a tower company and was concerned about potential conflict of interests. Mr. Rini did not see that the tower company would be a bidder, but would gladly recuse himself should the situation arise.

3. Next Steps

Gary Pennington wanted to get a consensus from the Commission as to which firm they felt would best represent the Commission and its interests.

Having voted, the majority chose Rini Coran, P.C as its preferred choice. However, the Commission is keenly aware of budget constraints and desires to minimize expenses as much as possible. Therefore, the Commission gave Gary Pennington the authority to negotiate rates with both firms. The Commission agreed to engage Rini Coran, P.C., subject to appropriate approvals, unless Fish & Richardson offers a substantially lower rate.

A motion was made and the meeting was adjourned.